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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	ATTORNEY DOCKET NO. CONFIRMATION NO.		
10/668,894	09/23/2003	Edward Zuzelo	ZUZELO-4	3584		
32132 LAMORTE &	7590 02/09/2007 ASSOCIATES P.C.	EVAMINED				
P.O. BOX 434			JIMENEZ, MARC QUEMUEL			
YARDLEY, PA 19067			ART UNIT	PAPER NUMBER		
		3726				
			<u> </u>			
SHORTENED STATUTO	RY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE			
3 M(NTHS	02/09/2007	DADED			

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

		Application	Application No. Applicant(s)					
		10/668,894	•	ZUZELO, EDWARD				
	Office Action Summary	Examiner	-	Art Unit				
		Marc Jimen		3726	•			
Period for	The MAILING DATE of this communicating Reply	ion appears on the	cover sheet with the c	orrespondence add	ress			
WHICI - Extens after S - If NO p - Failure Any re	PRTENED STATUTORY PERIOD FOR HEVER IS LONGER, FROM THE MAIL is ions of time may be available under the provisions of 37 IX (6) MONTHS from the mailing date of this communicate to reply is specified above, the maximum statutor to reply within the set or extended period for reply will, by ply received by the Office later than three months after the patent term adjustment. See 37 CFR 1.704(b).	ING DATE OF THI CFR 1.136(a). In no even ation. y period will apply and will by statute, cause the applic	S COMMUNICATION t, however, may a reply be time expire SIX (6) MONTHS from ation to become ABANDONE	N. hely filed the mailing date of this com D (35 U.S.C. § 133).				
Status								
1)⊠ I	Responsive to communication(s) filed or	n 18 January 2007						
		☐ This action is no						
·) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is							
	closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.							
	on of Claims	,						
· _		the application		•				
	Claim(s) <u>11,14 and 15</u> is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration.							
	5) Claim(s) is/are allowed.							
-	6)⊠ Claim(s) is/are allowed.							
	Claim(s) is/are objected to.							
	Claim(s) are subject to restriction	and/or election red	nuirement	•				
Application								
	•		•					
	he specification is objected to by the Ex		7 . · · · · · · · · · · ·					
10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.								
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).								
	he oath or declaration is objected to by	the Examiner. Not	s the attached Office	Action of form PTC	J - 102.			
Priority ur	nder 35 U.S.C. § 119							
	.cknowledgment is made of a claim for f]All b)□ Some * c)□ None of:	oreign priority unde	er 35 U.S.C. § 119(a)	-(d) or (f).				
/	Certified copies of the priority doc	uments have been	received.	• •				
2	2. Certified copies of the priority doc			on No.				
3	B. Copies of the certified copies of the				tage			
	application from the International	•		•	Ü			
* Se	ee the attached detailed Office action for	•	• • •	d.				
	•	,						
Attachment(. [-]					
	of References Cited (PTO-892) of Draftsperson's Patent Drawing Review (PTO-9	248)	I) Interview Summary Paper No(s)/Mail Da					
	ation Disclosure Statement(s) (PTO/SB/08)	_	5) Notice of Informal P					
Paper No(s)/Mail Date 6) Other:								

DETAILED ACTION

Allowable Subject Matter

1. The indicated allowability of claims 11, 14 and 15 is withdrawn in view of the newly discovered reference(s) to Zuzelo (US6651644). Rejections based on the newly cited reference(s) follow.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 11, 14 and 15 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6651644. Although the conflicting claims are not identical, they are not patentably distinct from each other because the

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patent includes the limitation "top side edge that lay perpendicular to the mid line" in claim 1 which is not claimed in claims 11, 14 and 15 of the application. Thus the invention of claims 1-19 of the patent is in effect a "species" of the "generic" invention of claims 11, 14 and 14. It has been held that the generic invention is "anticipated" by the "species". See *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993). Since claims 11, 14 and 15 are anticipated by claims 1-19 of the patent, it is not patentably distinct from claim 11, 14 and 15.

Conclusion

4. Applicant's amendment filed 6-13-06 necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Interviews After Final

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5. Applicant note that an interview after a final rejection will not be granted unless the intended purpose and content of the interview is presented briefly, in writing (the agenda of the interview must be in writing) to clarify issues for appeal requiring only nominal further consideration. Interviews merely to restate arguments of record or to discuss new limitations will be denied. See MPEP 714.13 and 713.09.

Response to Arguments

- 6. Applicant's arguments with respect to claims 11, 14 and 15 have been considered but are moot in view of the new ground(s) of rejection.
- 7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Jimenez whose telephone number is (571) 272-4530. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bryant can be reached on (571) 272-4526. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/ MARC JIMENEZ PRIMARY EXAMINER

MJ 2-2-07